Inside: Contact information for The Heartland Institute's Board of Legislative Advisors

Excerpt: Partisan Gerrymandering: Harms and a New Solution page 16

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PBot inside

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Potshots

President Bush wants to spend millions of dollars on "character" education in government-run schools. My parents gave me mine for free.

CAL THOMAS

Power corrupts. Absolute power's a blast.

JOHN FUND

I'm so glad there's California. It's kind of a big petri dish for the rest of the nation. Every time someone has a stupid idea, California tries it out, mercifully sparing the rest of us.

TIM SLAGLE

Presidential libraries . . . nowadays look like the fruit of an unholy alliance between the Smithsonian and Graceland—repositories doubling as shrines to a personality cult.

ERIC GIBSON

In October, a group of Chinese dignitaries visited the U.S. attorney's office in Chicago to learn how the American government copes with corruption by its public officials. Then they visited City Hall.

***CHICAGO* MAGAZINE**

President Bush's 2002 budget proposal appears to have unleashed the Federal Bureaucrat Virus: It divides your hard drive into hundreds of little units, each of which does practically nothing, but all of which claim to be the most important part of your computer.

How Politics Corrupts Money

by Paul R. Farago

They're at it again. Politicians, the reform industry, and the news media clamor to reduce the influence of money in elections. Reformers continue to propose more restrictions on donations and advertising, and incumbents continue to seek new subsidies for themselves.

AN AUCTION FOR GOODS

Campaign finance reformers have a problem. The First Amendment—intended to safeguard political dissent—begins with words that leave no room for misinterpretation: "Congress shall make no law . . ."

Are incumbent politicians, along with media mavens, ignorant of the First Amendment? Not at all. They are simply using an unauthorized power to apply the law unequally and thus protect a particular favored interest: their own.

It is true that the public distrust of politics is widespread. Campaigns seem meaningless, with over 98 percent of U.S. House members winning reelection. Voter turnout is in a long-term slide.

But previous campaign finance reforms that have sneaked past the courts have not resulted in more competitive elections or more independent governance. There is little reason to believe new restrictions will help.

The staged controversy over campaign finance is actually a distraction. It diverts attention from the root cause of the problem: the unconstrained use of government power to discriminate: that is, to play favorites, punish enemies, and reward friends. H.L. Mencken argued an election is "an advance auction sale of stolen goods." The goods of today's political system are special protections, subsidies, grants, or regulations that fall outside the realm of public health and safety.

In a regime of unchecked commercialization of legislated paybacks, money does not corrupt politics, as the reformers claim. Rather, politics corrupts money. When something of great value can be granted by officeholders instead of earned in the competitive marketplace, all roads lead to the Capitol.

The total amount spent in elections is insignificant when compared to the economic value of laws and rules that favor particular interests. For example, spending on federal elections over the last two years amounted to about $2.5 billion, according to the *Wall Street Journal*. During the same period, the U.S. government spent about $3.25 trillion: roughly 1,300 times more money.

Yet even the dollars spent in public budgets and campaigns cannot measure the enormity of the problem. They don't include the cost to ordinary citizens in reduced choices, higher prices, and increased division and cynicism.

Politicians who advocate campaign finance reform define the game: Reinforce privileged positions by hobbling challengers. Reform backers in the media get it. Peddling an easy solution to

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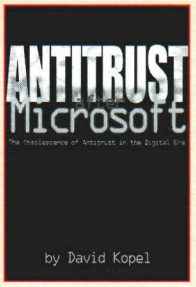

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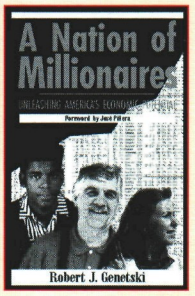

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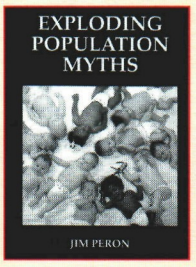

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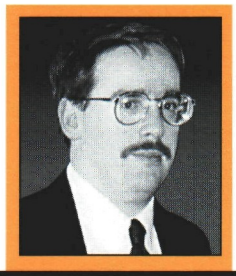

News from the Heartland

by John R. La Plante
Managing Editor

If you can't stop it, at least you can regulate it and thereby make people feel more comfortable.

That seems to be the sentiment of a Calgary, Alberta council member who has proposed the city issue ID badges to beggars. Councilor Bob Hawkesworth says his proposal is meant to "reduce any potential disruptive behavior." And I thought there were already laws against assault.

Hawkesworth's proposal also called for the newly licensed beggars to undergo counseling and enroll in job-search workshops.

Rather than eliminate or at least reduce such barriers to work as licensing requirements or high taxes, Hawkesworth proposes to legitimize panhandling. Instead of relying on the private sector to decide who deserves charity and who deserves the cold shoulder, bring in the government to set standards of conduct by beggars.

CAMPAIGN FINANCE

In another development in feel-good public policy, Congress has been debating campaign finance reform. Too much money! Corrupt politicians! Fat cats are buying favors from our political leaders.

Let me share with you a secret: Fat cats don't give to candidates for the office of township supervisor. As a general rule, the volume of campaign contributions increases with the size of the budget the prospective official will influence. Want to reduce the flow of money into politics? Reduce the size and scope of government.

But reformers, for all their righteous anger at the status quo, are usually unwilling to question the morality of progressive tax codes or the regulatory-welfare state machine. The machine, not accidently, is a great tool for promoting lifetime employment among the political incumbents reformers rail against.

While incumbents benefit from the current system, they will benefit even more from further restrictions on speech . . . that is, campaign finance reform. So the naive reformers outside the system, in collusion with incumbents who seek to fortify their position against real and prospective challengers, make it more difficult for outsiders to move in.

Antitrust, anyone?

IN THE DEPARTMENTS

Morgan Reynolds handles the hot potato of racial profiling. J.C. Bowman, a former high school teacher turned policy analyst, reviews President Bush's education plan. Angela Logomasini writes about the benefits of free trade in garbage.

Twila Brase previews proposed standards for medical care in Minnesota. Robin M. Brooks-Rigolosi tells us why she is suing the state of New York—and why her suit matters to you. Ron Faucheux calls for new standards of political behavior.

Robin Johnson reviews the lessons from privatization in Indianapolis. Alicia Hansen explains the difficulties of fixing the marriage tax penalty. Bartlett Cleland offers an introduction to the benefits of e-government, and Michael Barkey calls for charitable tax deductions as the next step in welfare reform.

In our guest editorial spots, Daniel Newby laments the passivity with which his fellow Utahns accept police checkpoints, and Roy Cordato identifies changes in sales tax collections in the state of North Carolina for what they are: a tax increase.

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continued from page 1

the problems of political power and influence, what Big News really seeks—like every other particular interest—is a privileged position in the political arena.

News editors and reporters have become more powerful under campaign regulations that silence dissenting voices, closing the political process. As a bonus, incumbency protection schemes like modern campaign finance reform save the media corps from the hard work of building new relationships with new officeholders.

ERA OF DISCRIMINATION IS OVER

During the Clinton years, politics corrupted money like never before. With the advent of regulation by litigation, state and federal governments now prosecute deep-pocket industries, ranging from Big Tobacco to Big Software to Big Mergers of Any Kind. The targets are forced to submit to proposed settlements and spend more money on lobbying to curry favor with politicians, hoping to fend off attacks, or at least find allies for political battles.

The ready supply of favors and threats creates the demand for spending on donations and lobbying. Reducing the influence of money in politics, then, depends on curbing the scope of government discrimination.

For example, according to the Center for Responsive Politics, Microsoft gave just over $50,000 in political donations during the 1992 election cycle. During the 2000 election cycle, by contrast, it gave over $4.5 million, a 9,000 percent increase. Why? Various government legal actions against the company pointed to the specter of future regulation, and Microsoft wanted better protection against current and future threats from the government.

One could conclude the reformers really don't mean it when they say they want to reduce the influence of money in politics. Instead, they use the issue, cynically, as a tool to accomplish their more important goal: increasing the power of government to discriminate in their favor. That work is best done by protecting career politicians from challengers, through unprincipled campaign finance laws.

In sum, the modern expansion of government discrimination has caused the upward pressure on campaign spending. The ready supply of favors and threats creates the demand for spending on donations and lobbying. Reducing the influence of money in politics, then, depends on curbing the scope of government discrimination.

TRUE REFORMS

Rolling back government favoritism depends on applying the principle of equality under the law. Congress and the President should reexamine federal activism in light of the General Welfare doctrine (Art. 1, Sec. 8 of the U.S. Constitution) that authorizes congressional power to provide for the welfare of all citizens, rather than for particular citizens.

This doctrine is in the Constitution because the signers knew that factions will tempt politicians to play favorites with federal legislation, risking division of the citizenry. The founders recognized that to prevent temptation would require making any particular favors available to all, and thus an unaffordable public expenditure. In fact, the cost and value of elections *were* curbed, as long as federal officials conformed to a simple requirement: to enact, uphold, and execute laws that apply equally to all people.

If we really seek ways to reduce the influence of money in politics, they are already in the Constitution. Honorable officials need only follow the rules.

There are ways to regulate elections to systemically reduce the scope of government favoritism, such as frequent rotation in office and an end to gerrymandering. The most elegant approach would be voluntary term limits, a common practice for most of our nation's history. But modern politicians will never put such limits on themselves.

Meanwhile, repealing the twentieth century campaign finance laws would be a step in the right direction, under the guidance of Thomas Jefferson's simple rule: "To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical."

- Public subsidies—a common solution offered by reformers—politicize society and encourage a feeding frenzy. Taxpayer-funded campaigns put politicians in charge of allocating the money—hardly a way to reduce the influence of money in politics.
- Tax-funded schemes like the Presidential election subsidy and mandatory TV ad discounts for politicians should be ended. Corporations' political contributions should be charged only to shareholders who first approve of a deduction from their own dividends. Similarly, union members' paychecks should not be docked for political expenses without their individual consent.
- Voluntary, rather than mandatory, disclosure of donors should be the rule. Silencing dissent, which mandatory disclosure effectively does, is contradictory to an open political process protected by the First Amendment.

In a regime of unchecked commercialization of legislated paybacks, money does not corrupt politics, as the reformers claim. Rather, politics corrupts money.

Over 50 years ago the U.S. Supreme Court ruled that mandatory disclosure of donors has a "chilling effect" on free association and free speech.

Campaign disclosure laws and spending limits should be repealed and replaced by voluntary agreements. Voluntary disclosure is both self-policing and self-regulating. If disclosure is important to voters, candidates who disclose accurately and on time while spurning donations from unpopular sources will be rewarded at the ballot box.

Paul R. Farago is a board member and senior advisor at the Cascade Policy Institute, a Portland, Oregon-based think tank (www.cascadepolicy.org).

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Crime

Morgan Reynolds

Morgan Reynolds is director of the Criminal Justice Center at the National Center for Policy Analysis.

Racial Profiling

Here's a no-win subject: race and crime. But let's talk about it anyway.

The latest manifestation of our intractable racial divide is DWB: "driving while black." Cops allegedly stop black motorists more frequently than whites, looking for illegal drugs and other mischief. The motive? Bigoted cops just like to do this stuff.

It's not that simple, of course. Directing the Attorney General to study the problem, President Bush has put profiling high on his agenda, saying "it's wrong and we will not do it in America. We will not hinder the work of our nation's brave police officers. But by stopping the abuses of a few, we will add to the public confidence our police officers earn and deserve."

No trade-offs to worry about here at all. We'll repair the perception that blacks are being singled out, yet maintain vigorous law enforcement.

In cities like Los Angeles, however, active policing has fallen to zip because every officer is worried about whether his history of arrests is racially correct. Crime has taken a predictable jump up, largely at the expense of black victims.

A DISASTROUS WAR

There's some truth to the black perception of police harassment and injustice. The handy explanation of racism is faulty, though. The root of the problem traces back to the disastrous war on drugs. Cops aren't out to get blacks but to get drug dealers, creating collateral damage for black motorists.

Study after study supports the proposition that the criminal justice system, overall, is not systematically racist. With occasional exceptions, virtually everyone gets a fair shake in the U.S. justice system. It's a malicious myth that our modern legal system is discriminatory. Increasing the numbers of black police officers and black judges has not reduced the racial disparities in our prisons and elsewhere in the justice system. Studies find that if anything, black felony defendants are more likely than their white counterparts to be acquitted in jury trials.

There is, however, a real problem of disproportionate stops of black motorists. In a new study, three economists at the University of Pennsylvania, led by John Knowles, demonstrate that cops stop black motorists at a higher rate than white motorists not because of racism, but because it's the best way to get a lot of drug arrests and convictions.

How do the authors know this? They studied the 1990s data on highway stops by the Maryland State Police. Black motorists were stopped at a rate 3.5 times that for white motorists.

Traffic studies and police testimony show blacks and whites are not distinguishable by their driving behavior. Despite the relatively high stop rate for black motorists, the police found contraband at the same rate for both races, about one in three searches. So there is "statistical discrimination," we might say, rather than race prejudice at work.

The unpleasant fact is that blacks are disproportionately involved in the drug trade, and good police work takes this information into account. So at one level, it's all fine-'n'-dandy: The evidence says the Maryland cops were not racially motivated.

IMPROVING RACE RELATIONS

But even if the study is right, all is not well, because it means that two of three stops are criminally unproductive for both races. More important, innocent black motorists are stopped 3.5 times more often than their white counterparts. That's the real problem . . . and a justified beef of the black community.

While the law is currently unsettled, it does not prohibit the use of race in police work, provided there is a reasonable linkage between race and likely criminal involvement. Yet such "statistical discrimination," innocent of prejudice though it may be, is under attack. The ACLU, among others, demands an end to racial profiling in police work. That would make the police less efficient, and thereby increase crime.

There's some truth to the black perception of police harassment and injustice. The handy explanation of racism is faulty, though. The root of the problem traces back to the disastrous war on drugs.

The President and the rest of us want to improve "the just and equal administration of our nation's laws." A good place to start would be the whole war on drugs.

We've been at it for decades and to what end? Futility and disaster. The harassment of black motorists is just one of its evil consequences. As government power and police corruption has advanced, civil liberties receded and cynicism intensified.

The more we suffer from the government's war, the more pressure for government to retreat, at least on softer drugs like marijuana. That would de-escalate the DWB problem and improve race relations generally, to the surprise of many.

FOR MORE INFORMATION...

Racial Profiling Charges: How Should Texas Respond? Read more on the legal and political controversy of this police tactic. (Texas House Research Organization, October 2000, 9pp.)

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Education

J.C. Bowman

J.C. Bowman, a former school teacher, is director of education policy for the Tennessee Institute for Public Policy.

A Lesson Plan for the Nation

The Bush education blueprint is an excellent framework and has moved forward quickly with bipartisan support. Bush has demonstrated he has been listening to both sides of the aisle in meeting shared goals for education reform.

In making this the first priority of his administration, Bush is not merely in step with most Americans. He may, in fact, have ended the domination of this issue by Democrats and their teacher union allies for many years.

Most of the Bush proposal will certainly pass. The focus on increasing student achievement, enhancing flexibility, and improving school safety will gain overwhelming support. Helping children with special needs, recruiting effective teachers, and improving education research are also likely to attract bipartisan agreement.

Closing the achievement gap between our country's best and worst students, while being able to maintain high standards and improving overall student achievement, becomes the focus of reform efforts. A seven-year study of reading and math scores on the National Assessment of Educational Progress showed that the best students in several states seem to be improving, but the worst are losing ground.

The President's initiative brings unprecedented education reform to the federal level. Is it enough? No, but it is a good start.

Under the Bush reform plan, schools, school districts, and states will have greater freedom in administering federal education dollars. Research-based reading programs in the early elementary grades and for low-income preschoolers, as well as strengthening math and science education, are important parts of the Bush framework. These measures, too, will be popular.

And few will complain about the Bush plans for increasing spending. His 2001 budget calls for an 8 percent increase, or $1.6 billion, in spending on elementary and secondary education.

PROBLEMS AHEAD

Critics of the Bush plan have been quick to condemn provisions that allow the parents of disadvantaged students in failing schools the option of using federal funds to find adequate public or private schools for their children.

Underlying the Bush proposal is a firm belief that the public education monopoly, when confronted by market forces, will be forced to improve. Schools, districts, and states that narrow the achievement gap and improve overall student achievement will be rewarded. States that fail to make progress may lose a portion of their administrative funds. This threatened loss of money—along with voucher provisions—is the most controversial, though most potent, element of the plan.

By introducing market forces, the President's initiative brings unprecedented education reform to the federal level. Is it enough? No, but it is a good start.

Many conservatives are naturally apprehensive about the testing aspect of the Bush plan. The dangers are real and we should be concerned. The plan requires states to test all students annually in reading and math from third grade to eighth grade to determine if they are making progress and to guarantee wise investment of federal dollars into the classroom.

The state will choose the test that best matches its standards and curriculum. The students' race, gender, disability, socioeconomic status, and English language proficiency will be evaluated on the results of these tests.

The other side of the coin is that we need more testing, particularly in reading and math. But we need it to occur earlier. We also have to limit student exclusions from the test, so all states are equally scrutinized. Education Secretary Dr. Rod Paige, while superintendent of the Houston Independent School District, had students tested with the Stanford 9 in grades 1 through 11. Doing so allowed for early identification of students who are behind grade level. It also ensured a higher level of competency for graduates of schools and school districts.

The results of state tests can be corroborated by the federally funded National Assessment of Educational Progress, which would sample students in fourth and eighth grade every year, in every state, to assess achievements in reading and mathematics. The NAEP is a good tool if it is not used as a high-stakes test, and if it is administered by an independent entity. It should serve only as a snapshot of educational progress.

Paige's colleague in Houston, Don McAdams, wrote in *Fighting to Save Our Urban Schools . . . and Winning*, "reform is seldom about reading, writing, and arithmetic. Rather, it is mostly about power, status, and money."

The Bush education proposal puts reform where it belongs, in stark contrast to the previous administration. "No child left behind" has to be more than a slogan; it has to become a vision made into reality.

FOR MORE INFORMATION...

No Child Left Behind. Examine the President's proposal for yourself. (White House document, January 2001.)

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Environment

Angela Logomasini

Angela Logomasini is director of risk and environmental policy at the Competitive Enterprise Institute.

Trashing Local Authority

They are at it again. Lawmakers in Congress are pushing legislation to give states the authority to regulate interstate commerce of municipal solid waste.

Our nation's founders included the Commerce Clause in the Constitution barring such protectionism because they knew trade barriers make people poorer, while trade promotes mutually beneficial exchanges.

Many low-income, and often rural, communities benefit tremendously from free trade of solid waste. Nationwide, many communities that struggle to meet basic infrastructure and other needs—without unbearably high tax burdens—have gone into the garbage business.

They host private regional landfills in exchange for "host" fees: a per-ton cut of the profits. Host fees have enabled communities to cut taxes while still repairing and upgrading infrastructure, giving pay raises to teachers, building schools and courthouses, and cleaning up old, substandard landfills.

When public health advocates began to realize the dangers of not managing trash, the waste industry emerged as a provider of an important public health service.

Virginia's seven regional landfills bring in more than half a billion dollars annually to the state. Host fees enabled one county to build a courthouse and a school, clean up an old leaking landfill . . . and cut property taxes by about a third.

Other states benefit from hosting landfills, as well. In Illinois, the village of Grayslake used $380,000 in landfill revenues to buy 23,000 new books for its library, and Fulton County officials used $226,000 to expand a courthouse. In Michigan, Auburn Hills used fees to upgrade its stormwater sewer system; Orion Township used them for a new stormwater system and a drinking water supply system; and Lennox constructed 7.7 miles of water line and purchased a $120,000 fire truck. Bethlehem, Pennsylvania expects to collect $7 million over the next decade.

RESTRICTIONS PROPOSED

Despite these benefits, members of Congress are beginning to push legislation to regulate commerce in trash. Representative Jim Greenwood, of Pennsylvania, has already introduced a bill; Senator George Voinovich, of Ohio, has said he will offer legislation in the Senate.

In the past, as chairman of the House Commerce Committee, Representative Tom Bliley of Virginia held up such legislation. His district hosted one of the state's regional landfills. But the new chairman, Representative Billy Tauzin of Louisiana, says this legislation will be a "high priority."

Such short-sighted politicking on this issue shows lawmakers either don't care or don't understand that low-income residents depend on free trade—even trade in garbage. With trade, residents in the host communities finally get better local government services, such as cleaner drinking water, and much-needed equipment, such as fire trucks. Nor do landfill critics seem to recognize that the trash business creates jobs and increased income for the rural poor.

LANDFILLS KEEP IT CLEAN

The trash business is not about fouling the environment—it's about keeping it clean. Before the waste industry emerged, people simply dropped wastes in the streets or waterways, which led to widespread disease.

When public health advocates began to realize the dangers of not managing trash, the waste industry emerged, not as a menace, as some now consider it, but as a provider of an important public health service. In fact, the public admired waste managers in the early years. One New York City sanitation official was even dubbed the "apostle of cleanliness" and the "fever slayer," according to garbage historian Martin Melosi.

Today, the industry continues to contribute to public heath. In addition to managing our trash and paying hosting fees, private operators of landfills often cover the cost of closing substandard, government-owned landfills.

Despite what critics claim, modern landfills provide an extremely safe way to dispose of waste. One study, for example, finds the risk of getting cancer from exposure to landfill wastes is about one in ten billion for modern landfills. That's incredibly safe when compared to other risks. For example, drinking one glass of wine during the course of one year poses a one-in-a-million cancer risk.

Clearly, the issue is not about public health and safety. It's about state and federal lawmakers seizing the opportunity to make emotional appeals in an attempt to appear environmentally concerned. While it may serve them well at the polls, it's a slap in the face for the many Americans who live in communities that without a landfill would lack the resources to pay for the basic infrastructure many of us take for granted.

FOR MORE INFORMATION...

Is Recycling Good or Bad—Or Both? Recycling is not always as environmentally sound as it seems. (Consumers Research, September 1997, 4pp.)

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Health Care

HMO Guidelines or New Mandates?

Twila Brase

Public health nurse Twila Brase is president of Citizens' Council on Health Care.

The "managed" in managed care has taken a new turn, as Minnesota's five major managed care organizations recently agreed to jointly develop comprehensive treatment guidelines for patient care.

Although the project, to be led by the Institute for Clinical Systems Improvement (ICSI), has the blessing of the state's most prominent HMOs, several concerns dampen the expectation of improved health care quality and lower health care costs.

To begin with, the health care guidelines are clearly intended to standardize the practice of medicine. While standardization and automation are perfectly suited to the making of widgets, they may not serve the goals of quality patient care. Each individual's complex and unique combination of physical characteristics, mental capacity, and emotional energy are unlikely to be sufficiently addressed through standardized treatment guidelines.

Given the history of HMO relationships with health care professionals, there is an uneasy possibility that what starts out as a simple guideline may quickly look and feel like a mandate.

Micromanagement of health care workers is another potential problem. Depending on the diagnosis, ICSI's treatment guidelines for doctors will contain flow charts, reference guides, measurement criteria, and specific questions to be addressed at various points of the assessment. Receptionists and emergency personnel are also given diagrams and algorithms to follow, with instructions that sometimes refer to separate but related guidelines. One envisions health care workers at every juncture trying to locate the right guideline, follow the charts, ask the questions, and document their performance.

Aside from any problems with the content of these guidelines, their sheer volume could prove daunting. With at least 12,000 known medical diagnoses and the guidelines averaging 50 pages each, at least 600,000 pages could eventually be written to guide the practice of medicine in Minnesota. And this figure does not include the guidelines aimed at assessing symptoms prior to diagnosis. It is quite possible that some hospitals and non-specialty clinics may require a small library to house the entire set of treatment instructions.

The guidelines are also troublesome because they divert a large amount of time away from patient care. Health plans, clinics, and hospitals must commit doctors and nurses—their most valuable health care resources—to the development process, thereby taking time and energy away from patients.

Even worse, doctors are expected to revise and update the guidelines every 12 to 18 months. With doctors and nurses already pressed for time, and patients waiting longer to see them, ICSI may be tempted to limit the use of medical professionals in developing the guidelines.

THE POWER OF THE LIST

Above all else, though, the greatest concern with the comprehensive guidelines lies in their origins.

Funded by HMOs, written with input from health plan managers, and suggesting that treatment decisions be regularly monitored through medical record reviews, the guidelines may be nothing more than a cleverly marketed management tool designed to cut costs by influencing physician treatment decisions. Given the history of HMO relationships with health care professionals, there is an uneasy possibility that what starts out as a simple guideline may quickly look and feel like a mandate.

As physicians know all too well, HMOs already have the power to de-list doctors and other health care professionals from their provider networks. With implementation of HMO-funded health care guidelines, one reason for de-listing could include documented non-compliance with suggested treatment protocols.

Health care guidelines are not new. The American Medical Association has posted 2,000 guidelines on the Internet. What is new is the coordinated funding of guideline development and implementation by Minnesota's competing HMOs.

Minnesotans have much to gain if health care quality is the primary objective of this budding endeavor. However, if the goal is cost-containment by limiting access to health care services, the public's discontent with managed care will not be assuaged.

Although HMOs want their enrollees to believe treatment guidelines will provide safer and better medical care, patients should be cautious about embracing an initiative that may use words on a page to limit health care services.

FOR MORE INFORMATION...

A New Prescription for Managed Care in New Hampshire? Managed care organizations are facing financial difficulties in various states. (Josiah Bartlett Center for Public Policy, December 1999, 4pp.)

Fax Call 312/377-3000 and request document **#3252111**

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Law

Discriminatory Alcohol Laws

Robin M. Brooks-Rigolosi

Robin Brooks-Rigolosi is a third-year law student at the Benjamin N. Cardozo School of Law in Manhattan. She is also a plaintiff in *Swedenberg v. Kelly,* a federal lawsuit to overturn New York's discriminatory alcohol laws.

Perhaps the Internet's most far-reaching effect is its creation of an entirely new marketplace. Consumers now shuttle through cyberspace and gallop across state lines to buy from distant merchants. This is particularly important for fledgling businesses—like small, family-owned vineyards—which wouldn't otherwise be able to reach customers long-distance.

The right to do business across state lines is more than just a nice idea—it's at the heart of our Constitution's Commerce Clause, which our founding fathers wrote to eliminate parochial trade restrictions, and to prevent states from discriminating against those from out-of-state.

Of course, the Commerce Clause is tempered by the Twenty-First Amendment, which allows state governments to regulate if and how alcohol enters their borders. New technology, however, is making it exceedingly difficult for states to completely control how residents purchase alcohol. But lawmakers are trying nonetheless.

Thirty states forbid out-of-state vineyards from shipping directly to their residents. Seven of those states—Florida, Georgia, Indiana, Kentucky, Maryland, North Carolina, and Tennessee—make such shipments a felony. Some penalties are staggering. For example, a direct shipment of wine to a consumer in Florida brings the same punishment a criminal gets for burglarizing a home: as many as five years in prison.

New technology is making it exceedingly difficult for states to completely control how residents purchase alcohol. But lawmakers are trying nonetheless.

Instead of allowing people to purchase wine directly from the source, most "prohibitionist" states have created a three-tier system of alcohol distribution, requiring that producers sell only to wholesalers, who sell to retailers, who sell to consumers. The laws are so strictly written that most of the 30 states won't even allow a resident to visit an out-of-state winery, buy a case of wine for himself while there, and then have the winery ship the purchase back home.

Curiously, most states that forbid direct shipment from out-of-state wineries *allow* direct shipments from in-state wineries. That means a Manhattanite may order a case of wine from an upstate New York vineyard hundreds of miles away—but can't do the same from a New Jersey winery just across the Hudson River.

Making matters even worse for vintners, just *writing* about their wines can turn them into criminals. New York, for example, outlaws sending any advertisement or price list into New York (unless, of course, the person is licensed to deal in alcohol in New York). That means a California winemaker who posts his prices online is unwittingly breaking New York's laws when someone in Buffalo retrieves the farmer's price list from its Web site.

The effect of these free speech and economic prohibitions is greatest on small wineries. These farms don't produce enough wine for the wholesalers licensed to sell to New York's retailers. Because the vast majority of the 1,600 U.S. vineyards aren't represented in typical stores, direct sales are the *only* way small farms can survive. These restrictive laws may eventually drive many small wineries out of business.

TEMPERANCE AND TAXES

Of course, these discriminatory laws have their supporters. Some claim they secure state tax revenue. Others say they prevent underage drinking. Some point to temperance.

Few, however, are citing the money that's on the line. The nation's largest wholesaler, Southern Wine and Spirits, generates $2.3 billion annually—some seven times the total amount of sales from direct wine shipments, which make $300 million each year.

The fear that states won't be able to tax isn't reason enough to outlaw otherwise-legal business. Like other companies, wineries could and would be forced to comply with any valid tax laws in effect, once direct sale bans are lifted.

Concerns over underage drinking and temperance don't withstand scrutiny, either.

Anyone who wants a drink can get alcohol through easier and faster methods. In fact, two citizens' groups that had supported the federal Twenty-First Amendment Enforcement Act—purportedly aimed at stopping teenagers from ordering alcohol over the Internet—dropped their support. Mothers Against Drunk Drivers (MADD) and the Emergency Nurses Association pulled their backing when it became clear the legislation was created to prevent economic competition, not to protect children.

Whatever the reasons for these laws, the end result is quite disturbing: Liquor wholesalers are granted state-sanctioned monopolies. The system threatens small, family-owned farms, forces buyers to purchase alcohol through middlemen, diminishes consumer choice, and imposes unnecessary costs on buyers.

This wasn't the intent of the Commerce Clause or the Twenty-First Amendment. Our founding fathers would be horrified.

FOR MORE INFORMATION...

Privatizing Wine and Spirits Distribution. States can realize large financial benefits by privatizing their liquor distribution system. (Commonwealth Foundation, 1997, 2pp.)

Fax Call 312/377-3000 and request document **#6512308**

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Politics

Ron Faucheux

Ron Faucheux is editor-in-chief of *Campaigns & Elections.*

How to Make Campaigns Better

Like the weather, everybody complains about political campaigns—but nobody does anything about them.

Voters gripe about snarling, confusing attacks. Candidates grumble about public apathy, begging for bucks, shallow press coverage, and slanderous charges. Political consultants are tired of candidates who don't know why they're running and reporters who don't know what they're covering.

Reformers are repelled by big money. Contributors are sick of being hustled.

Studies sponsored by The Pew Charitable Trusts provide ample evidence of widespread dissatisfaction:

- Seventy percent of voters believe unethical practices happen very or fairly often in campaigns, according to a nationwide Yankelovich poll for the Center for Congressional and Presidential Studies at American University. They also found that consultants rated nearly 60 percent of the candidates they've worked for as being average or below average and thought quite a few had broken promises, sold out to special interests, or engaged in unethical behavior.
- Three out of five state legislative candidates, surveyed by the University of Maryland and *Campaigns & Elections* magazine, thought the campaign finance system was either "broken and needs to be replaced" or "has problems and needs to be changed."
- Campaign donors aren't so happy either. The Institute for Global Ethics found 76 percent of them believe attack-oriented campaigns are wrong, while 59 percent say ethics and values have worsened in the past 20 years.

So why doesn't somebody do something?

There are many reasons. For starters, escorting change through legislative and regulatory bodies is often an endless journey. Despite breathless editorials and election-time promises, reform comes slowly—when it comes at all—and it often produces unintended consequences. In politics or meteorology, it's never easy tampering with the forces of nature.

Partisanship and self-survival are driving forces in the political arena, and they often bottle up change. Incumbents, hired and fired by the rules of elections, are wary of anything that could—just *could*—encourage or help opponents.

There is a growing concern that improvement in the conduct of campaigns is not likely to occur—regardless of what happens on the legislative front—until norms of acceptable behavior are changed. Bad attitudes won't be legislated away. And they certainly won't go away on their own.

A NEW CIVIC FORCE

What's needed is for independent, strong-minded private-sector leaders to band together for action.

This new civic force needs to focus on changing the political culture, from one based on the acceptance of skullduggery to one based on higher expectations and even public outrage. Better campaigns are a duty of citizenship—not just something pundits talk about in Washington.

Well before each election, the media and civic leadership—together with the candidates and their staffs—need to be brought to the table. Roles and duties should be defined. Voluntary standards of campaign conduct should be worked out through a flexible process of negotiation.

Standards must be strictly nonpartisan and taken into account the reality that political campaigns are about winning, and the people running them have a right to fight hard.

A host of encouraged practices could quickly uplift standards: media-promoted town hall meetings to give candidates a chance to talk issues beyond short sound bites; public debates with fair rules and extensive coverage; disclosure of every penny raised and spent by all candidates and outside committees; prevention of ballot fraud, voter harassment, and senseless pranks; scrubbing registration rolls of errors; placing uniform disclaimers on all materials and Web sites.

[Campaign] standards must be strictly nonpartisan and take into account the reality that political campaigns are about winning, and the people running them have a right to fight hard.

America is a big, diverse nation. Building a new civic culture must recognize differences across subcultures. How politics are played in Los Angeles, Chicago, or New Orleans is quite different from how they are played in Portland, Des Moines, or Greenwich.

Just like Neighborhood Watch was designed to fight crime block-by-block, so, too, successful efforts to improve our campaigns must reflect local needs. That's imperative if political practitioners—pragmatic, street-wise, immersed in their own cultures—are to take reform efforts seriously.

Elections will never be perfect. But in a process that now knows few bounds, they can be made better.

FOR MORE INFORMATION...

Campaigns & Elections magazine is published 10 times a year by Congressional Quarterly Inc. A year's subscription is $49.95.

PHONE For more information, call **800-771-8252**

WWW Or visit the magazine's Web site at **http://www.campaignonline.com**.

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Privatization

Robin A. Johnson

Robin A. Johnson is director of the Privatization and Government Reform Center at the Reason Public Policy Institute.

Managed Competition in Indianapolis

Before compassionate conservatism became a major theme of the Bush campaign, Stephen Goldsmith was employing a softer brand of smaller, smarter government as mayor of Indianapolis.

Goldsmith transformed municipal government through a form of competitive contracting, called managed competition, which improved the quality of services while reducing costs.

With economic conditions suddenly reversing the financial fortunes of many governments, managed competition is a promising option for proponents of limited government . . . or for anyone interested in sound management.

MANAGED COMPETITION, INDY-STYLE

The phrase "managed competition" is associated in most peoples' minds with the ill-fated Clinton health care reform effort of the mid-1990s. A different type of managed competition, occurring almost simultaneously in several cities and states across the nation, allowed public employees to bid on public contracts along with private firms.

Goldsmith was elected in 1991, promising to improve the quality of local government services and reduce costs through competitive contracting. After being challenged by unions who wanted to be able to compete for contracts, city leaders included public employees in the bidding process.

Dozens of services were subjected to managed competition during the Goldsmith era, resulting in savings of more than $200 million. Employees were successful in many of the competitions, demonstrating the powerful effect of competition on the public workforce. Employees started to do their jobs better and became more responsive to their customers. Competition unleashed the creative spirit in employees and resulted in better services and lower costs.

MANAGING FLEET SERVICES

The managed competition for fleet services illustrates how the process worked. When given the opportunity to compete, Indianapolis Fleet Services (IFS), a government agency, streamlined its operation and upgraded customer service and efficiency. IFS reduced its workforce by nearly one-third, and lowered its budget from $11.1 million to $9.1 million. IFS workers agreed to forego the pay raises previously agreed to by their union in exchange for a plan that would pay them more for generating savings beyond those specified in their proposal.

IFS won the competition and saved taxpayers $8 million over four years. The incentives worked, too—operating costs fell another 3 percent despite a nearly 5 percent increase in the number of vehicles served.

LESSONS LEARNED

"Government is full of good people stuck in bad systems—a change in systems allows employees to do a better job," says former deputy mayor Skip Stitt. Monopoly conditions in government stifle the creativity of employees who know best how to do their jobs. In his book *The Twenty-First Century City: Resurrecting Urban America*, Goldsmith wrote city officials "found most of the waste came from management, not workers," after discovering the fleet service department had two managers for every three employees.

Many assumptions about government are simply not true. Labor relations do not have to be a win/lose situation or a zero-sum game. More investment or funding does not necessarily mean better services, and less spending does not always mean poorer services. Too often, elected officials and the public are presented with false choices about governing options. This can limit their ability to think creatively, as officials in Indianapolis did.

> *"Government is full of good people stuck in bad systems—a change in systems allows employees to do a better job."*
>
> *Skip Stitt*
> *Former Deputy Mayor*
> *Indianapolis*

Doing more with less is more than a campaign slogan—it can happen, provided that governments use the proper tools. Stitt believes the systematic use of strategic management tools used in Indianapolis—performance measurement, popular budgets, activity-based costing (ABC), infrastructure balance sheets, and employee empowerment—are the key to better government performance.

Managed competition may not work for all governments, especially smaller cities and counties. It requires an investment of resources to adequately prepare public employees for competition. It also requires strong political leadership to drive the forces of change and promote labor-management cooperation.

But, as Indianapolis has demonstrated, the power of managed competition can transform government into efficient, customer-driven organizations with effective, motivated employees.

FOR MORE INFORMATION...

Competitive Bidding and Privatization. This how-to guide provides many ideas for an effective competitive bidding process. (Evergreen Freedom Foundation, March 2000).

Fax Call 312/377-3000 and request documents **#6532414** (11pp.), and **#6532415** (10pp.)

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Regulation

Susan E. Dudley

Susan E. Dudley directs the Public Interest Comment and Regulatory Accounting projects of the Regulatory Studies Program of the Mercatus Center at George Mason University.

Supreme Court Ruling Disappoints

In February, the U.S. Supreme Court dismayed many observers and delighted others when it ruled on one of the most closely watched and potentially significant administrative law cases in recent history.

The case stemmed from a May 1999 decision of the U.S. Court of Appeals for the District of Columbia, which remanded to EPA regulations that set allowable levels of ozone and particulate matter (PM) in ambient air.

The Court of Appeals had ruled that in setting the PM standards, EPA violated the "nondelegation doctrine" and was, in essence, making law rather than carrying out the laws made by Congress. Cross-petitioners (private parties and states) asked the Supreme Court also to rule on the question of whether the Clean Air Act (CAA) prohibits EPA from considering the costs of implementing the standards it sets, as EPA contended.

In a unanimous decision, the Supreme Court affirmed in part and reversed in part the judgment of the Court of Appeals, and dealt a disappointing blow to the private parties, nonprofit organizations, and states who sought a more rational regulatory approach from EPA.

Contrary to the appeals court ruling, the Supreme Court found EPA's interpretation of the CAA does not violate the non-delegation doctrine. Furthermore, it found the CAA does not permit EPA to consider implementation costs when setting ambient air standards.

Supporters of heavy-handed regulation from Washington have hailed this decision as a victory. Indeed, it has cast a cloud over hopes for a more constrained and principled approach to regulatory policy.

WHAT TO WATCH

Flickering through this cloud, however, may be some rays of hope.

First, the Supreme Court ruled EPA's interpretation of the Clean Air Act's sections on the implementation of the revised ozone standard was unreasonable. As a result, EPA may not be able to enforce a revised ozone standard that by its own estimates would impose social costs far in excess of any health benefits.

Second, in oral arguments before the Supreme Court, attorneys representing EPA made important concessions as to the limits on the Administrator's discretion in setting the standards. Third, EPA never appealed to the Supreme Court a key ruling by the Court of Appeals, which requires the agency to consider the offsetting health benefits of ozone when setting ambient air standards.

Ozone has the beneficial effect of shielding ultraviolet radiation, which can cause skin cancers, melanoma, and cataracts. In setting the ozone standard in 1997, EPA interpreted the CAA as precluding consideration of these and other offsetting health effects.

Focusing narrowly on the hypothetical health effects of a substance in the air, without considering the health consequences of removing it, is unlikely to yield standards that actually improve public health, as required by the statute. As Justice Breyer explained in a concurring opinion, "[a] rule likely to cause more harm to health than it prevents is not a rule that is 'requisite to protect the public health.'"

Also of interest is Justice Thomas's opinion concurring with the non-delegation aspect of the decision. He noted, "[o]n a future day, however, I would be willing to address the question whether our delegation jurisprudence has strayed too far from our Founders' understanding of separation of powers."

The final implications of this case remain to be seen, but observers should look for two developments. The first will be how EPA responds to the Court of Appeals' remand of the ozone standard. In one of her final acts, former EPA Administrator Carol Browner signed a response to the remand, which was later withdrawn by the new administration.

In essence, Browner's 144-page draft proposal would have determined that information linking ozone reductions to changes in ultraviolet radiation exposure was in fact too uncertain to warrant lowering the ambient air standard. However, EPA previously found this same information sufficient to ban chlorofluorocarbons suspected of reducing stratospheric ozone levels. It will be very interesting to see how new EPA chief Christine Whitman resolves this seemingly contradictory use of scientific information.

The Supreme Court dealt a disappointing blow to the private parties, nonprofit organizations, and states who sought a more rational regulatory approach from EPA.

Second, the Court of Appeals must now rule on the sufficiency of EPA's scientific evidence under the new and tougher legal standards the government was forced to embrace in its Supreme Court oral arguments. These rulings will also include a decision on the hotly debated topic of whether EPA improperly withheld scientific evidence from public scrutiny in developing its standards. Many observers expect the Court of Appeals to resolve these issues by the end of 2001.

FOR MORE INFORMATION...

Whitman v. American Trucking Associations. The majority and concurring opinions issued in this case are available through *PolicyFax* and *PolicyBot.* (U.S. Supreme Court, February 2001).

Call 312/377-3000 and request documents **#2303802** and **#2303803** (majority opinion) and **#2303804, #2303805,** and **#2303806** (concurring opinions).

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Taxes

Meet the Marriage Penalty

Alicia Hansen

Alicia Hansen is a staff writer for the Tax Foundation.

One topic that often comes up in tax reform debate is what to do about the marriage penalty. As it turns out, fixing it is not as easy as it appears.

A marriage penalty occurs when the tax liability of a married couple filing jointly is greater than the sum of the filers' liabilities if they were single. Some people receive a marriage bonus, which receives much less attention.

The two provisions most often responsible for the penalty/bonus are the standard deduction and the differing widths of tax brackets for single and married filers. The size of a penalty or bonus is determined by the couple's income, the way the income is split between the two, the number of dependents, and the amount of itemized and standard deductions.

The Congressional Budget Office (CBO) estimates that in 1996, 42 percent of married couples incurred penalties, with the average penalty totaling $1,380, and 51 percent of couples received bonuses averaging $1,300 per couple. In 1999, 48 percent are estimated to have incurred penalties and 41 percent received bonuses.

MEET THE MARRIAGE PENALTY

Consider Paul and Lisa, each of whom earns $40,000. They face a $1,490 marriage penalty, for two reasons.

First, the standard deduction for joint filers is not twice that of a single filer, but less than twice. This means two unmarried taxpayers together have a standard deduction larger than the one they would have as a couple.

Since Paul and Lisa are married, they lose $1,400 of the combined standard deductions they had as single filers. The result is an increase in their taxable income.

Second, as a couple, Paul and Lisa have a larger percentage of their taxable income taxed at a higher rate. The breakpoint for moving from the 15 percent tax bracket to the 28 percent bracket is $25,750 for single filers and $43,050 for couples filing jointly. Since the joint filer tax brackets are not twice as wide as the brackets for singles, part of a couple's income may be pushed into a bracket that is higher than the bracket either person would fall into singly.

Tinkering with the current code can never satisfy both single and married taxpayers.

In this example, Paul and Lisa singly would each have 22 percent of their taxable income taxed at 28 percent; jointly, they have 36 percent of their taxable income taxed at 28 percent.

Due to the combination of the joint filer standard deduction and joint filer brackets, Paul and Lisa have over a quarter of their gross income taxed at 28 percent if they file jointly. If they filed separately, only 18 percent of their gross income would be taxed at the 28 percent rate.

REFORM IS NEEDED

The three fundamental pillars of the current tax system affecting joint filers are contradictory. Tinkering with the current code can never satisfy both single and married taxpayers.

The only other way to do away with all penalties and bonuses is to alter or eliminate the more than 60 provisions of the tax code that affect joint and single filers differently.

The three principles are a progressive rate structure, neutrality with regard to marriage (two single filers who together earn the same amount as a married couple should face the same tax liability as the married couple), and equal treatment of couples (two couples with the same income should pay the same amount of tax, regardless of each couple's income split).

The current tax system satisfies only the first of these principles. Without fundamental tax reform, all three can never be satisfied.

Six major proposals have been offered to fix the marriage penalty:

- widening the tax brackets and raising the standard deduction for joint filers;
- exempting some of the lower-earning spouse's income from taxation;
- expanding the parameters of the EITC;
- allowing couples to choose the filing status that results in the lower tax burden;
- some sort of fundamental tax reform, such as a consumption tax or flat tax; and
- requiring spouses to file individual tax returns.

The only change that would eliminate all marriage penalties and bonuses is the last one; however, that solution would violate the principle of treating all couples equally. The only other way to do away with all penalties and bonuses is to alter or eliminate the more than 60 provisions of the tax code that affect joint and single filers differently. No small task, this would require fundamental tax reform.

FOR MORE INFORMATION...

Reducing the Marriage Penalty: A Good Way to Reduce Taxes? Gary Robbins and Aldona Robbins provide more background. (Institute for Policy Innovation, July 1998, 2pp.)

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Technology

Bartlett D. Cleland

Bartlett Cleland is director of the Center for Technology Freedom at the Institute for Policy Innovation.

E-Government: Coming to a Town Near You

One of the most enduring results of the 2000 Presidential election is that it made people think about how technology affects the way citizens and governments relate to each other.

The effect of various technologies on the casting and recording of votes was of great interest. But even beyond that scandal, government technology budgets from the local to the federal level are being reviewed with an eye toward enhancing government services. This comes at a time when Internet penetration has reached 60 percent: some 168 million U.S. users.

The Bush administration has earmarked $100 million for programs to use the Internet to make federal agencies less bureaucratic and more streamlined.

According to a recent survey of 1,900 city and county governments, 95 percent had a Web site in place or planned to have one in place this year. Ninety percent reported that if they did not already provide the ability to pay tickets, taxes, or utility bills on-line, they soon would provide those services. Anyone who has ever stood in line on a sunny Saturday afternoon waiting to renew a driver's license should find very appealing the notion of being able to do that quickly and efficiently over the Internet.

Anyone who has ever stood in line on a sunny Saturday afternoon waiting to renew a driver's license should find very appealing the notion of being able to do that quickly and efficiently over the Internet.

E-GOVERNMENT OBSTACLES

The expansion of e-government, which includes accessing government services on the World Wide Web, has been slowed by several obstacles. Local governments have had to rethink their operations, to take advantage of new technologies in the delivery of their services.

As reported by one recent, wide-ranging study, local government officials believe e-government is hindered by a shortage of information technology workers, too little money, and a technological pace that exceeds the speed of government. While these are real challenges, none of them is a sufficient reason for inaction.

Some state and local governments have argued they cannot commit the additional investment in information technology from their scant resources. This view considers only the immediate "return" rather than the true, longer-term return on the investment. Increasing the use of technology in government, particularly when agencies deal directly with the taxpayer—call it G2T for "government to taxpayer"—will actually lead to long-term gains.

LONG-TERM GAINS POSSIBLE

Part of the evidence for long-term gains is intuitive, although it has been clearly demonstrated in the private sector. Economic growth and the incredible gains in productivity over the last several years have been directly attributed to the increased use of various technologies in the workplace. One should hope that productivity in public offices can follow the private sector's example.

Regardless of how well government productivity can track private-sector gains, taxpayers want, and use, e-government services. Taxpayers have reported that e-government has provided distinct benefits to them, by allowing them to avoid long lines, get more convenient hours for service, and increase the speed of the service they receive.

Whether it is obtaining or renewing licenses or paying taxes, all taxpayers must at some time interact with governments. In these widely required service interactions, the electronic delivery of government services can have the greatest effect.

How can new e-government spending be paid for? The public may be quite willing to pay user fees for better service. In a recent poll, 71 percent of those surveyed said they would be happier with a system that charged a convenience fee, paying just for services used, rather than drawing on general government tax dollars to finance its operation.

As productivity increases and more people become comfortable using on-line methods for renewing their driver's license or paying taxes, the costs of government functions should decrease. Over time, these efficiencies should lessen the pressure for tax increases, and may even bring about some tax cuts.

The increased use of new technologies presents politicians and government managers with a double blessing: a cure for the many headaches people face when dealing with government (hours-long waits and rude agency employees, for example), as well as a means to lower taxes or at least restrain spending.

By applying some of the lessons already learned in corporate America, government officials who invest in technology can improve the way citizens and governments interact . . . and benefit all parties in the process.

FOR MORE INFORMATION...

Privatization 2000: E-government. An excerpt from this "state of privatization" report provides more information on the use of e-government. (Reason Public Policy Institute, 2000, 14pp.)

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Welfare

Michael B. Barkey

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Rallying the Armies of Compassion

Many civil libertarians and strict separationists view direct government grants to faith-based social service providers—one major facet of President Bush's faith-based initiative—as an assault on the "separation of church and state."

But church/state dynamics are not a one-way street. Even if Constitutional, direct government funding can threaten the integrity and effectiveness of faith-based organizations. The potential hazards are manifold, including organizational dependency, loss of mission focus, and watered-down programs stripped of essential religious content.

While the "Charitable Choice" provision of the 1996 welfare reform law sought to minimize the risks associated with accepting government money, many of those risks remain. An even better approach to "rallying the armies of compassion" seeks to encourage people to contribute more directly to the strength of religious charities, rather than relying on government grants.

TAX CODE CHANGES

Nearly 70 percent of taxpayers—almost 85 million Americans—do not now receive recognition for their charitable giving in the tax code. According to a recent report by PricewaterhouseCoopers for Independent Sector, extending the charitable deduction to nonitemizers would increase giving levels by 11 percent—translating into an additional $14 billion of giving each year—and stimulate almost 12 million new givers.

"This deduction would actually achieve three goals," testified Ken Gladish, national executive director of the YMCA of the USA, before the House Ways and Means Committee in late March. "It would reduce taxes, target tax cuts to lower and middle-income taxpayers who make up the majority of nonitemizers, and encourage charitable giving to community-based nonprofits that are on the frontlines helping to strengthen America's families."

Tax credits are another approach worthy of consideration.

A charitable tax credit would make it easier for people to give money to private charities. Donations to nonprofit organizations would be counted against a donor's tax liability (up to perhaps 15 percent of his total liability), thereby reducing the price of giving. By coupling self-interest to compassion, an added incentive would be created for philanthropy, generating an additional $145 billion every year for organizations that serve the poor, according to estimates by economists David Tuerck and Marianne Johnson of Suffolk University.

RALLYING VOLUNTEER TROOPS

Increased funding for community initiatives is necessary to reinvigorate civil society, but it is not sufficient. Mobilizing human resources—"rallying the armies of compassion"—is essential to meeting human needs. As the federal government reduces its involvement in welfare policy, it is important that the number of volunteers actively serving charitable organizations increase.

Volunteer tax credits would recognize the *de facto* staff of private charitable organizations who provide essential service to the nation's nonprofits. Businesses could afford to give time off to employees for volunteer work and to count the wages paid for that time against their own tax liability.

Pro bono tax credits, on the other hand, would permit independently employed professionals, i.e., doctors, accountants, plumbers, etc., to lend their talents to charitable organizations during a regular day's work and count the cost of services provided against their own tax liability.

By coupling self-interest to compassion, an added incentive would be created for philanthropy, generating an additional $145 billion every year for organizations that serve the poor.

In either case, the tax credit would affirm the value of volunteering. It would reward companies and employees willing to live out their own commitments to the poor. It would give credit where credit is long overdue.

PRIVATIZATION BY ANOTHER MEANS

A properly crafted tax credit regime would also help to privatize ineffective, means-tested government programs. Since donations to organizations that work with the poor would count against a person's tax liability, when charitable giving increased—whether that increase came in the form of more money or more time—government revenue would decline in an equal proportion.

The question, then, is no longer whether our society should help the poor. The question is who—government or the private sector—is best equipped to help the poor.

Strengthening civil society is the main ingredient to winning the War on Poverty. This means making changes in the tax code to reflect that priority. It also means challenging poor people—as well as challenging ourselves—to achieve more. True compassion demands nothing less of us.

FOR MORE INFORMATION...

Give Credit Where Credit is Due: A New Approach to Welfare Funding. James P. Angelini provides more details on charitable tax credits. (Beacon Hill Institute, 1995, 16pp.)

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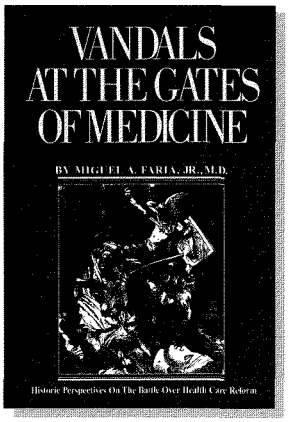

Vandals At The Gates of Medicine

Historic Perspectives on The Battle Over Health Care Reform

Miguel A. Faria, Jr., M.D.

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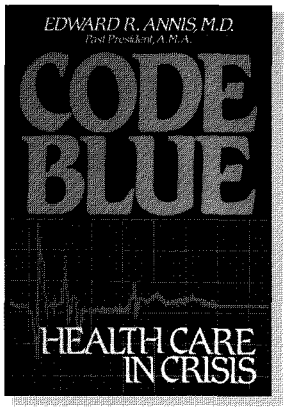

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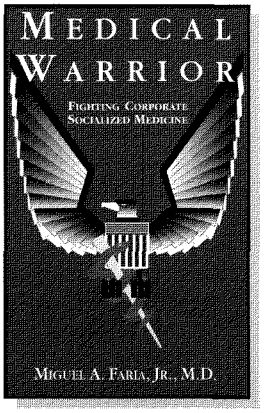

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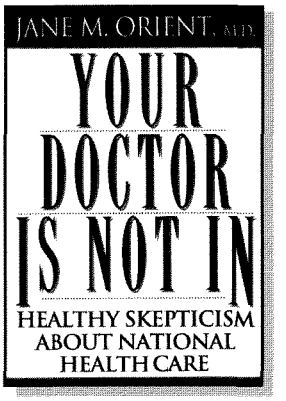

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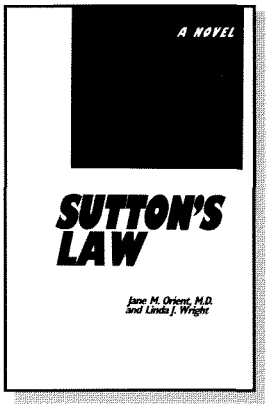

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Partisan Gerrymandering: Harms and a New Solution

Daniel D. Polsby and Robert D. Popper

Editor's note: Just in time for redistricting battles, we present an excerpt from the archives. Heartland Policy Study No. 34, "Partisan Gerrymandering: Harms and a New Solution," was released on March 4, 1991.

Redistricting, at least as it is practiced today, inevitably involves gerrymandering. Broadly defined, "gerrymandering" refers to any manipulation of district lines for partisan purposes. The term is derived from the name of former Massachusetts governor Elbridge Gerry.

The partisan map-maker seeks to draw lines that concentrate the opposition's electoral support in just a few districts (called "packing" or "stacking"), while at the same time creating many more districts where his own party commands a small, but still safe, majority ("cracking"). The net result is that the opposition party's votes are squandered by being thrown into carefully constructed landslides.

The problem of gerrymandering can be stated so luridly that it cannot possibly be ignored. A party in control of districting could at least in theory construct a majority in every district but one, no matter how many districts there were and no matter how voters were dispersed throughout the state. If there were 20 districts, it could assure itself majorities in 19.

To be sure, there is nothing specific in the Constitution that forbids gerrymandering, any more than there is specific language that forbids the excessive, unfair, or abusive exercise of any delegated power. But the very idea of democracy that is embedded in the Constitution certainly forbids legislatures from immunizing themselves against the popular will.

Gerrymandering violates the right to be free of governmental diminishment of the potential efficacy of one's vote. The voter's stake in democracy is actually diminished, and he or she is deprived of an important act of power.

LEGAL HISTORY OF GERRYMANDERING

While the courts have ruled on gerrymandering, they have failed to stop it. In 1986 the Supreme Court held in *Davis v. Bandemer* that claims of partisan gerrymandering are justiciable as violations of the Equal Protection Clause of the Constitution. The *Davis* decision is problematic, though, for the precedent it sets with respect to how gerrymandering claims are to be evaluated. The Court chose to emphasize impact over intent, requiring that a gerrymander case be evaluated on the basis of harm to an excluded group's "opportunity to participate" in the political process as a whole.

The Court's standard requires the successful plaintiff to show the political party to which he belongs has been denied the opportunity to participate in or influence the political process. Inasmuch as conditions this extreme probably do not exist anywhere in the United States, such a standard is tantamount to the proposition that gerrymandering does not exist.

In a series of malapportionment cases, most prominent among them *Reynolds v. Sims* (1964), the Court established that "the judicial focus must be concentrated upon ascertaining whether there has been any discrimination against certain of the State's citizens which constitutes an impermissible impairment of their constitutionally protected right to vote." In the malapportionment cases, the court found such an impairment where voter districts were constructed with vastly unequal populations, resulting in the intentional "dilution" of the votes of persons living in overpopulated districts.

In brief, malapportionment is not a denial of the right to vote; it is a dilution of that right. What the two concepts have in common is the state's act of discriminatory classification. Both gerrymandering and malapportionment involve state-sponsored discrimination against voters.

Viewed in this light, gerrymandering is a violation of an individual right. It violates the right to be free of governmental diminishment of the potential efficacy of one's vote. The voter's stake in democracy is actually diminished, and he or she is deprived of an important act of power.

COMPACT DISTRICTS RESTRAIN GERRYMANDERS

Two current standards—equinumerosity (the requirement that all districts have approximately equal populations) and contiguity (that all parts of a district be adjacent to one another rather than detached or separated by other districts)—cannot, alone, prevent gerrymandering.

"Compactness" is more promising. It requires that district boundaries be without uncalled-for spikes, indentations, or silly meanderings. Requiring compactness focuses on and foils a technique that is indispensable to creating effective gerrymanders.

A successful gerrymanderer begins by assuming that his party has a certain amount of support statewide; he then apportions that support strategically among individual districts. The goal is to control the winning and losing margins in every district.

At the threshold, the gerrymanderer encounters a difficulty: Friendlies and unfriendlies will be inconveniently dispersed in the area he is trying to gerrymander. Because people do not naturally arrange themselves to suit his purposes, he must help them, putting them where he needs them to be, by drawing districts to contain enough friendlies to outvote the unfriendlies by a comfortable margin. Boundary lines are stretched and shrunk to include certain neighborhoods of voters and exclude others. In this process, districts become non-compact.

If compactness is a constraint, however, a gerrymanderer will find his job noticeably more difficult, although not absolutely impossible. Computers can endlessly crank out district plans that conform to a fixed standard of compactness.

The point of a compactness requirement, however, is not to make gerrymandering logically impossible, but to make it practically useless, so that it becomes an ineffective tool for routine use. But gerrymandering can be limited, and the worst cases can be prevented.

Before making the case that compactness inhibits "effective gerrymandering," it is necessary to clarify the meaning of "effective." An effective gerrymander, for purposes of our argument, is one that has been designed to in-

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crease the disparity between a party's actual support among the population and its seats in the legislature, and which actually achieves this result.

No one can say *a priori* how many seats a party is "entitled to" given a particular level of popular support. But a compactness standard does not seek to answer that question. A compactness requirement, by purely mechanical operation, tends to inhibit gerrymandering.

GOOD GOVERNMENT AND REPRESENTATION

A requirement of compactness would prevent "effective gerrymandering." Consider a hypothetical state with 20 congressional districts, and with a voting population evenly divided between two parties. With no compactness requirement, the party controlling the districting could readily arrange wins in 19 of those districts. The more that compactness is given as a constraint on the discretion of the map-makers, the greater their difficulty in arranging wins in 19 districts. At a certain level of compactness, only 18 districts will be secure. Tighten up on the compactness requirement some more and only 17 can be counted on. And so on. If the only acceptable plan were the most compact plan (according to whatever definition of compactness one were using), results more like 10-10 or 11-9 are what would usually emerge.

Professor Bruce Cain has offered a critique of the value of compactness—what might be called the "good government" reasons for skepticism. He begins by making a list of all the "good government" values one would like to see embodied by electoral districts. He then argues these values may or may not be furthered by the adoption of a compactness standard, and that, in general, its good effects and bad effects will wash. Thus, for example, the compactness criterion may make it difficult to preserve "communities of interest," however these are defined.

But even if Cain is right in his evaluation of compactness as a "good government" principle, the value of preventing gerrymandering outweighs the independent benefits we can associate with compactness. Although compactness may have some independent value as a principle of democracy, one needs no better reason for embracing the compactness principle than that it makes effective gerrymandering more difficult. Gerrymandering is, after all, a pathology of democratic government. It allows legislators to play unfairly with what is perhaps their most solemn and central power: setting the constitutive terms of the democratic argument.

Cain seeks to strengthen his argument by pointing out that compactness may at times conflict with the "good government" value of proportional representation. It must be conceded, for example, that because single-member districts are naturally skewed against minorities, there are going to be cases in which accurate proportional representation may be more readily accommodated by non-compact districts. In such cases enforcing a compactness standard may seem counter-productive.

The wisdom of deliberately concentrating racial minorities to create minority-dominated districts has been widely and ably debated, and need not be considered here. A race-conscious electoral policy, assuming we are to have one, can be accommodated by a legal compactness standard by the simple expedient of requiring that non-compactness be explained. If the explanation is that non-compactness was forced by the requirements of the Voting Rights Act, this should be legally sufficient.

Anyone who eyeballs a few legislative district maps will quickly learn to recognize gerrymanders, although admittedly with imperfect accuracy. But one need not rely on seat-of-the-pants reckoning to find the sort of non-compactness that implies gerrymandering.

A WORKABLE COMPACTNESS STANDARD

A workable legal standard of compactness proposed by Joseph E. Schwartzberg defines compactness in terms of the effectiveness of a shape's perimeter in capturing area.

Schwartzberg's standard measures the ratio of a shape's perimeter to its area. Not every ratio of perimeter-to-area, however, will adequately gauge the compactness of that area, as the following example shows.

Consider two squares of different sizes, one with two-mile sides and one with ten-mile sides. The smaller square has a perimeter of eight, an area of four, and therefore a ratio of 2.0. The larger square has a perimeter of forty and an area of one hundred, or a ratio of 0.4. The shapes, although they are identical, have very different scores.

There is a technique, however, that avoids this anomaly: renormalizing the perimeter-to-area ratio against an absolute scale. For any length of a perimeter, whether ten inches or ten miles long, a circle is the geometric shape that encloses the maximum possible area. Every other shape must somewhere make a concession of some kind, and thus its perimeter will not be used with the greatest possible efficiency to capture area. The absolute measure of a shape's efficiency is thus determined by dividing the area of the shape by the area of a circle with a perimeter of equal length. When this formula is applied, all calculations result in a figure between 0 and 1 (1 being the best possible score) and all identical shapes, regardless of size, score the same.

Any deviation from any given shape that changes a district's area and perimeter to the same extent—no matter where the protrusion is added, which way it is oriented, how far it is from the district's center, or how it is shaped—will degrade the district's Schwartzberg score by an identical amount.

The Schwartzberg measure highlights the best features of the other criteria of compactness. It charges points when districts are longer than they are wide; when boundaries are far from the center; when lines are indented; or indeed whenever the district lines are longer than they need to be. The Schwartzberg test even measures "smoothness," taking away points for any irregularities in a boundary, even in a generally compact district.

Despite any theoretical objection to the Schwartzberg criterion, it nevertheless works well in practice. The Schwartzberg standard is so sensitive to any deviation that it is impossible to gerrymander comfortably using either a spike or an indentation. Adding perimeter in a greater proportion than area will always drop the score. In that sense there are no "wrong" results: Districts with appendages or indentations will always score worse than those without.

CONCLUSION

It is ironic that reapportionment, a project made necessary by fidelity to democratic principles, should become the occasion for so much gamey partisan brawling, but the fact cannot be denied. Ordinary voters believe gerrymandering is one of many ways politicians frustrate, rather than facilitate, the popular will. Ordinary voters, furthermore, are right.

Anyone who eyeballs a few legislative district maps will quickly learn to recognize gerrymanders, although admittedly with imperfect accuracy. But one need not rely on seat-of-the-pants reckoning to find the sort of non-compactness that implies gerrymandering. Schwartzberg's mathematical standard is a superior way to measure the kind of non-compactness that is associated with gerrymandering.

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Checkpoints in America

Daniel B. Newby

On July 2, 2000, a couple days before the anniversary of the signing of the Declaration of Independence, my family drove up Utah's Big Cottonwood Canyon to enjoy the mountain air. Not far up the canyon, signs appeared warning us to prepare to stop and be searched, and that search dogs were in use. In stubborn fashion, I promptly made a U-turn and headed back the way I had come.

An unmarked police vehicle soon pulled out behind our car and followed us down to the mouth of the canyon. There, police lights flashed and we were pulled over. An officer in civilian clothes approached our car, asked to see my driver's license, and inquired as to why I had avoided the search. In as rational and calm terms as possible, I reminded the officer of the recent Utah Supreme Court decision against such random searches and explained that I did not want to have any part of it.

The officer immediately became defensive. He justified the checkpoint by the number of drugs taken off the street and the safety that was being assured for people like me. I responded that it was very disturbing to me that Americans would prefer this type of security over the risks associated with freedom.

The officer explained the difficult situation the police are in: People go up the canyons, do drugs, and kill somebody on the way down, and then everyone demands to know why the police didn't do something to stop it. I could sympathize with his predicament, but still did not agree with the supposed remedy.

After some back and forth, the officer walked away from our car and held a discussion with another officer. Upon his return, I was given a warning ticket for making an unsafe U-turn.

As we concluded our debate on whether freedom was more important than efficiency in fighting crime, I learned we both had served in the military and had law enforcement experience. In fact, he had served in my birth nation of Germany, and my father had served as a police officer in Utah. As human beings we parted on friendly enough terms, but as Americans we parted with the strongest of ideological differences.

As a native of Germany, I had relatives on both sides of the Iron Curtain and also frequented Berlin as a child, passing via train or car between the walls and watchtowers. I vividly remember the searches, the soldiers with their weapons at the ready, and the intimidation. I remember Checkpoint Alpha in Helmstedt, where Americans were briefed and prepared for the suffocating ordeal of passage. Those memories made each return to, and moment in, America all the more refreshing and wonderful.

Until July 2, 2000. As I started my car again, visions of East German checkpoints flew through my head and I wondered to myself, "Has Utah really changed this much? Have we become so dependent on security that we no longer value freedom?"

Has Utah really changed this much? Have we become so dependent on security that we no longer value freedom?

If traffic checkpoints represent an acceptable loss of freedom today, what will be acceptable tomorrow?

SECURITY OR FREEDOM? BOTH?

If traffic checkpoints represent an acceptable loss of freedom today, what will be acceptable tomorrow? If a few fundamental rights can be rationalized away to stop the bad guys today, what additional rights will be disregarded tomorrow?

In a case decided by the Utah Supreme Court in February 2000, Associate Chief Justice Christine Durham poignantly argued:

"Broad-based, suspicionless inquiries are reminiscent of the much hated and feared general warrants issued by the British Crown in colonial days, where British officers were given blanket authority to search wherever they pleased and for whatever might pique their interest. It was precisely this type of activity the Fourth Amendment was designed to prohibit. Indeed, the use of general warrants was an important factor giving rise to the American Revolution. This state's early settlers were themselves no strangers to the abuses of general warrants. . . . A free society cannot tolerate such a practice."

These eloquent words fell on deaf ears, however. Exactly one month to the day of this supreme court decision, the Utah Highway Patrol (UHP) operated another dragnet traffic checkpoint in blatant violation of the state court's ruling. Dragnet traffic checkpoints continue unabated in Utah.

Two hundred years ago, American sage Benjamin Franklin predicted Utah's growing dilemma: "They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety." Utah should not disregard the warnings of Franklin or those who have tasted what it means to pass through Checkpoint Alpha.

Daniel B. Newby is director of operations and development for the Sutherland Institute, a Utah-based public policy research institute.

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